

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION**

UNITED STATES OF AMERICA,

Criminal No. 06-211(3) MJD/AJB

Plaintiff,

v.

REPORT AND RECOMMENDATION

ERIC ROBERT HARGROVE,

Defendant.

Jeffrey S. Paulson, Esq., Assistant United States Attorney, for the plaintiff, United States of America;

Gary R. Bryant-Wolf, Esq., for the defendant, Eric Robert Hargrove.

This action came on for hearing before the Court, Magistrate Judge Arthur J. Boylan, on September 11, 2006, at the U.S. Courthouse, 300 South Fourth St., Minneapolis, MN 55415. Defendant Eric Robert Hargrove moved for suppression of search warrant evidence, but advises the court that the magistrate judge's prior report and recommendation to the district court on co-defendant Fenner's motion to suppress physical evidence is properly adopted and submitted to the district court to address defendant Hargrove's motion to suppress search warrant evidence. Therefore, defendant Hargrove's Motion for Suppression of Evidence Seized Pursuant to Search Warrant [Docket No. 53] is likewise before the court on four-corners review of two search warrants that were received as exhibits at hearing on August 11, 2006, and the motion is herein submitted to the district court on the

adopted report and recommendation by Magistrate Judge Susan Richard Nelson,¹ which is hereby incorporated in this report and recommendation and is fully recited herein.

Based upon the file and documents contained therein, along with exhibits received at hearing, the Magistrate Judge makes the following:

Findings

On June 23, 2006, United States Magistrate Judge Arthur Boylan issued separate warrants to search the residence at a specified address in St. Paul, Minnesota, including an unattached garage (Hearing Exh. No. 1), and a particularly identified dark blue vehicle (Hearing Exh. No. 2). The residence and the vehicle are further identified in the supporting affidavits as a residence owned by Kevin Fenner and a vehicle owned by Mr. Fenner. Separate but identical applications and affidavits were submitted in support of each of the warrants. Each search warrant identified the objects of the warrant as controlled substances, including cocaine, crack cocaine, heroin and fentanyl; receipts and documents relating to the sale of controlled substances; records relating to the transportation and distribution of controlled substances; address and telephone books; financial records and materials; travel documents; safe deposit box rental agreements and keys; money and valuables; photographs; drug packaging equipment and supplies; firearms and ammunition; electronic and communications devices; and materials evidencing constructive possession of seized items. Each warrant was issued on

¹ United States Magistrate Judge Arthur Boylan, the judge presiding at the hearings in this matter, was the judicial officer who issued the search warrants that are now at issue. Since motions to suppress evidence seized pursuant to those warrants came before the court on four-corners analysis, those exhibits were provided to United States Magistrate Judge Susan Richard Nelson for independent review. The report and recommendation to the district court is based upon review of the documents by Magistrate Judge Nelson

the basis of probable cause contained in the Affidavit of DEA Task Force Officer Ronald Lehner, including reports from multiple reliable confidential informants, surveillance information, two controlled drug buys, and public records checks. Certain informant reports were corroborated by checks on use of rental vehicles.

Based upon the foregoing Findings, the Magistrate Judge makes the following:

Conclusions

Evidence seized pursuant to separate warrants to search the residence at a specified address in St. Paul, Minnesota, including an unattached garage (Hearing Exh. No. 1), and a particularly identified dark blue vehicle (Hearing Exh. No. 2), was not unlawfully obtained in violation of the constitutional rights of defendant Kevin Joseph Fenner or defendant Eric Robert Hargrove. Both search warrants were issued on June 23, 2006, and were based upon sufficient probable cause as stated in the Affidavit of DEA Task Force Officer Ronald Lehner and as determined by United States Magistrate Judge Arthur Boylan. Each warrant properly and sufficiently identified the location of the search and the items to be seized. The search warrants in this matter were lawfully issued and there is no requirement for suppression of evidence seized pursuant to either warrant.

Based upon the foregoing Findings and Conclusions, the Magistrate Judge makes the following:

RECOMMENDATION

The Court **hereby recommends** that defendant Eric Robert Hargrove's Motion for Suppression of Evidence Seized Pursuant to Search Warrant be **denied** [Docket No. 53].

Dated: September 6, 2006

s/ Arthur J. Boylan
Arthur J. Boylan
United States Magistrate Judge

Pursuant to Local Rule 72.1(c)(2), any party may object to this Report and Recommendation by filing with the Clerk of Court, and by serving upon all parties, written objections which specifically identify the portions of the Report to which objections are made and the bases for each objection. This Report and Recommendation does not constitute an order or judgment from the District Court and it is therefore not directly appealable to the Circuit Court of Appeals. Written objections must be filed with the Court before September 20, 2006.

Unless the parties stipulate that the District Court is not required by 28 U.S.C. § 636 to review a transcript of the hearing in order to resolve all objections made to this Report and Recommendation, the party making the objections shall timely order and file a complete transcript of the hearing within ten days of receipt of the Report.